

**HIGH COURT OF UTTARANCHAL AT NAINITAL**

(Court's order whether the case is or not approved for reporting)

(Chapter VIII, Rule 32 (2)(b))

Description of the Case.

**W.P. No. 5354 of 2001 (M/S)**

**With**

**514 of 2001 (M/S)**

**R. D. Bhardwaj**

**Vs.**

**Smt. Saroj Jain**

**Approved for reporting.**

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**Not approved for reporting**

**Date of decision**

**Initial of Judge**

**RESERVED**

**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.**

WRIT PETITION NO. 514 OF 2001 (M/S)

R.D.Bhardwaj ..... Petitioner.

Vs.

Smt. Saroj Jain ..... Respondent.

.....

WRIT PETITION NO. 5354 OF 2001 (M/S)

Smt. Saroj Jain ..... Petitioner.

Vs.

R.D.Bhardwaj and  
others ..... Respondents

.....

**Dated of Judgment: 15.10.2004**

**Hon'ble Rajesh Tandon, J.**

By the present writ petitions, the petitioners have prayed for quashing the order-dated 29.02.2000 passed by the Prescribed Authority as well as order dated 28.02.2001 passed by the Appellate Authority. Writ Petition No.514 of 2001 is being treated as a leading case.

**Facts of the case**

Briefly stated the facts according to the case of the parties are that the application under Section 21 (1)(a) of the U.P. Act No. 13 of 1972 was filed by Smt. Saroj Jain (respondent in writ petition no.514) praying for the release of the accommodation in possession of the tenants.

The Prescribed Authority has rejected the application. On appeal by the respondent, the accommodation was partly

allowed. Both the parties have come up in the writ petitions. Writ petition no. 514 of 2001 is made a leading case.

### **Bona fide need**

Respondent in writ petition no. 514 of 2001 has filed her release application for requirement of herself and her family members stating therein that there are eight family members viz. two major sons, self and her husband, mother-in-law and father-in-law. The details of which are given below:

“यह कि प्रार्थी के परिवार में निम्न सदस्य हैं:-

- (क) प्रार्थिनी स्वयं आयु लगभग 42 वर्ष
- (ख) प्रार्थिनी के पति श्री कोमल कुमार जैन, आयु लगभग 47 वर्ष
- (ग) प्रार्थिनी का पुत्र सचिन जैन आयु लगभग 20 वर्ष
- (घ) प्रार्थिनी का छोटा पुत्र अचिन जैन आयु लगभग 19 वर्ष
- (ङ) प्रार्थिनी के ससुर श्री पुन्ना मल जैन आयु लगभग 73 वर्ष
- (च) प्रार्थिनी की सास श्रीमती उर्मिला जैन आयु लगभग 70 वर्ष

The respondents have stated that the total accommodation available writ her is only two bed rooms and basically the family has to take shelter in the drawing room. One room on the ground floor is being used for parking the scooter etc. The details of the accommodation in possession of the landlord is given below:

“यह कि प्रार्थी व उसके परिवार को वर्तमान में उक्त आवासीय स्थान उपलब्ध है:-

- (क) एक ड्राइंग रूम नाम लगभग 10 फीट . 20 फीट
- (ख) एक शयन कक्ष नाप लगभग 10 फीट . 12 फीट
- (ग) एक शयन कक्ष नाम लगभग 10 फीट . 12 फीट
- (घ) एक रसोई
- (ङ) एक स्नानागार
- (च) शैचालय
- (छ) खुली छत
- (ज) भूतल पर एक कमरा नाप लगभग 10 फीट . 12 फीट कि जो साइकिल व स्कूटर खड़ा करने के लिये तथा घरेलू सामान आदि रखने के लिये स्टोर के रूप में प्रयोग हो रहा है।

The respondents landlady has mentioned in her application that due to paucity of the accommodation it has become very difficult for the family members to cater their life as the two adult sons have to pass their life without and bed room. Relevant paragraph 13 is quoted below:

“यह कि प्रार्थिनी के दोनो पुत्रों के सोने के लिये कोई कमरा उपलब्ध नहीं है और प्रति दिन रात को ड्राइंग रूम में चारपाइया लगाकर सोने की व्यवस्था की जाती है और सबेरे उक्त चारपाइयों को हटाया जाता है। प्रार्थना के दोनों पुत्र वयस्क है और निकट भविष्य में उनका विवाह होना है। और प्रार्थिनी के उक्त दोनों पुत्रों के लिये अलग अलग शयन कक्ष की आवश्यकता है।

Apart from that, there is no place to entertain the guests when in point of fact the petitioner has available with him the property at 15 Dhamawala Bazar.

Petitioner has filed the written statement denying the requirement of the landlord. However, with regard to the family members, it is admitted that the family is residing in the house in dispute. The petitioner has stated that the clinic is going on in the premises in dispute.

Both the parties have filed their affidavits in support of their cases. On behalf of the landlord, copy of the sale-deed was filed dated 22.11.1994.

On behalf of the respondent it has come on record that the husband of Smt. Saroj Jain is doing the work of accountancy and since he is doing the work in his house, there is no proper place in the house for doing the office work of the husband of the respondent.

It has come on the record that the landlord has available with him following accommodation.

“The residential accommodation under occupation of the applicant/landlady, was disclosed in para 9 of the release application but it was alleged by the opposite parties that the measurement of the room and their use has been described erroneously by the applicant. So while adducing her evidence, the applicant/landlady filed a scaled map disclosing the measurements of the entire premises including the disputed property (paper no.27A) and confirmed in para 9 of her affidavit (paper no.21A) that the accommodation under her occupation (comprises a drawing room 10’4” X 20’10”, Bed room

10'4" X 11' and 10'4" X 12.9", kitchen, bath-room, toilet and one room 9' X 12'9" at the ground floor which is being used as a Store and to park the vehicles. The applicant further described that the drawing room is being used for egress and ingress of the bed room, kitchen and the bath-room because their doors open in the drawing room and such a situation, has practically converted the drawing room into a lobby."

On behalf of the petitioner it was submitted that earlier notice dated 27.11.1996 as well as P.A.Case no. 86/96 dated 10.12.1996, was filed and since the same was withdrawn by the landlord and, therefore, the present application is not maintainable as the notice dated 10.12.1996 has been waived.

On behalf of the respondent, the affidavits of Sri Rakesh Jain, Sri Anand Prakash Gupta and Sri Satish Gambhir were filed. It was stated that the petitioners are residing at 13 Dhamawala Bazar, Dehradun.

On behalf of the petitioners, affidavits of Sri R.D.Bhardwaj, Smt.Sita Devi, Sh. Suchcha Ram, Sh. Sohan Lal, Sh. Amar Nath Jaggi, Sh. Amar Singh and Sh. R.P.Bhardwaj were filed.

I have perused the entire record. The affidavit of the respondent shows that due to paucity of the accommodation it is not possible to cater the requirement of the family members. The Prescribed Authority has held as under:

“वर्तमान में प्रार्थिनी के पास प्रथम तल पर एक बड़ा ड्राइंग रूम, दो शयन कक्ष, शौचालय, रसोई, बाथरूम आदि है प्रार्थिनी के अनुसार भूतल पर भी एक कमरा है। विपक्षीगण के अनुसार प्रार्थिनी ने इस कमरे के साथ शौचालय व बाथरूम का निर्माण किया हुआ है और कामन पेसेज पर छत डालकर उसका प्रयोग कर रही है। प्रार्थिनी के परिवार के सदस्यों की संख्या तथा उनके वर्तमान वर्ष को देखते हुये किसी प्रकार भी जो आवास प्रार्थिनी के पास है वह उसकी आवश्यकता से कम नहीं है।”

The Appellate Authority has recorded the finding to the following effect:

“It is not the requirement of law that the landlord should be on street in order to get his house released. The appellant has a right to use her accommodation in the way she likes and the respondent/tenant has no right to compel for converting the use of the store cum parking place situated at the ground floor adjacent to the disputed property. Learned counsel laid emphasis that the landlord is the best Judge of his residential requirement.

In support of the above contentions, learned counsel placed reliance on the pronouncement of Hon'ble Allahabad High Court reported in 1990 (2) ARC 391 Srinivas Kulshreshth Vs. Vith A.D.J. Etah and Ors.; 1992 (2) ARC 523 “Chandra Pal Singh Parihar Vs. Vth A.D.J. Kanpur Nagar and others’, 1998 (1) ARC 385 “Mohd. Umer and another Vs. IIIrd A.D.J. Moradabad and Others and (1996) 5 SCC 353 “ Smt. Prativa Devi Vs. T.V.Krishnan.....”

In view of the pleadings of the parties and in the light of the evidence adduced by them, it is established that the applicant's family presently consists of self, husband and two sons, who are in their mid twenties and the accommodation under her occupation comprises a drawing room 10'4" X 20'10", Bed Room 10'4" X 11' and 10'4" X 12' X 9" kitchen, bath room, toilet and one room 9' X 12'9", at the ground floor.

The need of the parties has to be considered keeping in mind their status. The appellant's husband does the accountancy job who are commonly called as “Munim”. This fact can not be overlooked that in the year 1994 when the appellant had purchased the disputed property she knew it well that it is being used by Shri Gagan Bhardwaj s was admitted by her in the petition moved earlier under section 21(1)(b) of the Act. At that time too, both her sons were about 17-18 years of age. It was not justified on the part of the appellant to assume that soon after the expiry of statutory period she would get the disputed property released on the ground of her personal need. Nevertheless, there can be no denial of the fact that the need for one bad room for the appellant and her husband and two bed rooms for both her sons, which can now be used for their studies also and after their marriage these rooms can be used by them as bed-rooms, is genuine and bonafide.

It is pertinent to mention that the opposite parties have specifically asserted that the room available to appellant at the ground floor is not being used by her as a Store. She rather got the latrine and bath room constructed attached with this room and also get the common passage covered. This fact has not specifically

been controverted by the appellant and the construction of attached latrine-bath room with the room at the ground floor leads to suggest that the said room is not merely being used as store or to park the vehicle. However, the appellant's need for additional room cannot be denied and in case a room is provided to the appellant, that can be used as a guest room or as an office by her husband to meet the people who come to visit him.

At this juncture, it also needs to be mentioned that the appellant's family has a scooter as admitted to the O.Ps themselves when they say that the appellant's husband used to park his scooter at premises no.31/35 in the same locality which was in occupation of the appellant's father-in-law. Simultaneously, it needs to be kept in mind that the appellant has got the common passage covered at the ground floor where the scooter can be parked."

However, the appellate authority after recording the aforesaid finding, has released only one room. The finding is reproduced below:

"I am of the view that the requirement of appellant-landlady can be satisfied by releasing only one room at the ground floor and even thereafter two rooms will be available to the respondents/tenants which can satisfy their needs also."

On behalf of the landlords, Smt. Saroj Jain has filed affidavit and prayed that she requires the premises for the bona fide need of the family members, the same is quoted below:-

"यह कि प्रथम तल पर स्थित शायन कक्ष, रसोई, तथा स्नानगार का एक दरवाजा ड्राइंग रूम में खुलता है और शायन कक्ष, रसोई तथा स्नानगार में ड्राइंग रूम का प्रयोग ड्राइंग रूम में कम बल्कि लाबी के रूप में अधिक होता है। इसके विपरीत विपक्षी के प्रतिवाद पत्र की चरण संख्या 10 का लेख गलत है, जहाँ तक प्रार्थिनी की ड्राइंग रूम के प्रयोग के संबंध में स्वेच्छा का प्रश्न है इस सम्बंध में ड्राइंगरूम के लिये जिस प्रकार का स्थान चाहिये इस प्रकार का स्थान प्रार्थिनी को उपलब्ध नहीं है, यह भी गलत है। कि प्रार्थिनी द्वारा इस चरण में लिखा गया कथन किसी दुर्भावना को प्रदर्शित करता हो।"

यह कि भूतल का प्रार्थिनी को उपलब्ध उक्त कमरे के अलावा अन्य कोई ऐसा स्थान नहीं है, कि जहाँ पर प्रार्थिनी अपने परिवार के सदस्यों की साइकिले, स्कूटर आदि खड़े कर सकें, और भूतल पर स्थित कमरों में साइकिले, स्कूटर खड़े किये जाते हैं और

उसी में अन्य घरेलू सामान, अनाज आदि जाता और भूतल पर स्थित कमरा, स्टोर के रूप में प्रयोग में है। इसके विपरीत विपक्षी के प्रतिवाद पत्र की चरण सं०-11 का लेख गलत है। यह कहना गलत है कि कोमन रास्ते का कथित प्रयोग वादिनी द्वारा किया जा रहा हो, उक्त कोमन रास्ते से अन्य सम्पत्ति स्वामी को भी आवागमन का अधिकार प्राप्त है भूतल पर स्कूटर , साईकिल आदि तथा अन्य घरेलू सामान अनाज आदि रखने के लिये अन्य कोई स्थान उपलब्ध न होने के कारण उक्त कमरे को स्टोर के रूप में प्रयोग किया जा रहा है, और स्टोर के रूप में प्रयोग होने के कारण लैटरिन का भी इस्तेमाल नहीं हो पा रहा है, भूतल पर कोई पृथक बाथरूम नहीं है। यह कहना गलत है कि भूतल पर कथित कमरा आवास हेतु एक पूर्ण इकाई के रूप में रिक्त अवस्था में वादिनी को उपलब्ध हो।

यह कि प्रार्थिनी के दोनो पुत्र अध्ययनरत है और प्रार्थिनी के पुत्रों के अध्ययन के लिये कोई कमरा उपलब्ध नहीं है इसके विपरीत विपक्षी के प्रतिवाद पत्र की चरण संख्या -12 का लेख गलत है। यह कहना गलत है कि प्रार्थिनी के पुत्रों के पास रहने व अध्ययन हेतु कोई और आवास उपलब्ध हो यह भी उल्लेखनीय है कि प्रार्थिनी का बड़ा पुत्र स्नातक तक शिक्षा पूर्ण कर चुका है और वह विवाह योग्य आयु को हो गया है।

यह कि प्रार्थिनी के दोनों पुत्रों के सोने के लिये कोई कमरा उपलब्ध नहीं है और प्रति दिन रात को ड्राइंग रूम में चारपाइयाँ लगाकर सोने की व्यवस्था की जाती है और सबेरे उक्त चारपाइयाँ को हटाया जाता है। प्रार्थिनी के दोनो पुत्र व्यस्क है और निकट भविष्य में उनका विवाह भी होना है और प्रार्थिनी के उक्त दोनो पुत्रों के लिये अलग अलग शयनकक्ष की आवश्यकता है। इसके विपरीत विपक्षी के प्रतिवाद पत्र की चरण संख्या - 13 का लेख गलत है उसके सम्बन्ध में वास्तविकता विस्तार से ऊपर वर्णित कर दी गई है, इसके विपरीत विपक्षी का कथन गलत व दुर्भावना पूर्ण है। यह कहना गलत है कि ड्राइंग रूम में चारपाई लगाकर सोने की बात मुकदमें में रंग देने की चेष्टामात्र हो।

विपक्षी के प्रतिवाद पत्र की चरण संख्या -28 का लेख गलत है यह कहना गलत है कि श्री पुन्नामल जैन के पास 31/35 नेताजी मौहल्ला देहरादून के बैसमेट में कथित कोई जगह उपलब्ध हो या कथित कोई जगह श्री पुन्नामल जैन प्रयोग कर रहे हो या प्रार्थिनी व उसका परिवार स्टोर के रूम में प्रयोग करता हो। श्री शैलचन्द जैन एवं उनके पुत्र के स्वामित्व वाला कोई भी भाग श्री पुन्नामल जैन या प्रार्थिनी व उसके परिवार के अध्यासन में नहीं है। जिस कारण ऐसे किसी भाग का प्रार्थिनी या उसके परिवार द्वारा स्कूटर आदि खड़े करने या उसे स्टोर के रूप में प्रयोग करने का कोई प्रश्न या अवसर नहीं है। यह कहना गलत है कि प्रार्थिनी के आवेदन में वर्णित भूतल पर स्थित कमरा प्रार्थिनी के परिवार के शयन कक्ष के रूप में प्रयोग होता हो, और स्टोर के रूप में व स्कूटर, साईकिल आदि खड़े करने के लिये प्रयोग न होता हो।

During the course of the proceedings of the writ petition, the petitioners have filed a supplementary affidavit. Para 3 of the same reads as under:

“ That in the map filed alongwith the counter affidavit, it is admitted by the respondent that the ground floor of the property bears four rooms. Two rooms out of the four are in the tenancy of the petitioner no. 2 and 3. One room which is denoted as store room is in occupation of the landlady (respondent). The fourth room alongwith covered veranda had been in tenancy of one Mukhtiar Jain who had expired about 20 years back. After the death of Mukhtiar Jain his son

Rajesh had continued as the tenant till 01.02.2003. He had committed suicide and there is no heir or legal representative of Mukhtiar Jain who would enter in the shoes as tenant. The other heirs namely Rakesh is residing in Delhi, the daughter Smt. Pushpa w/o Bhushan is residing in Ghaziabad, Smt. Anita w/o Kamal is residing in Shamli, Distt, Muzaffarnagar and lastly Smt. Rita w/o Manoj is residing in Dehradun. The wife of Mukhtiar Jain had died about five to six years back.”

The respondent has replied the said affidavit and has stated as under:

“ That the contents of paragraph no. 3 of the supplementary affidavit are wrong and are denied, in reply thereof, it is stated here that in ground floor, one store room, which is in possession of deponent, two rooms and a covered verandah, which is in occupation of petitioner and one room stated in paragraph under reply measuring 9’ X 10 , which is not in possession of the petitioners. The petitioners wrongly stated in paragraph under reply that the said room is with covered verandah, in fact, there is no covered verandah with the said room. The said is measuring 9’ X 10’ without any window and with a small gallery, which is still in possession of legal heir of Mukhtyar Jain. It is wrong to say that there is no legal heir of Mukhtyar Jain, who would enter in the accommodation. It is also stated that till date the possession of accommodation, stated in paragraph under reply, has not been delivered to the petitioners. It is further pertinent to bring on records that the effect of the tenant in the accommodation, stated in paragraph under reply, have not been removed of the legal heir of Mukhtyar Jain.”

In view of the above, no accommodation has come in possession of respondent. No such averments have been made in the rejoinder affidavit, which was filed to the following effect:

“ That the contents of paragraph 4 of the supplementary counter affidavit are denied and those of paragraph 3 of the supplementary affidavit are reaffirmed. It is specifically stated by the deponent in his supplementary affidavit that the heir or legal representative of Mukhtiar Jain has already expired and

since 1.2.2003 no one of the family of Mukhtiar Jain is living in the alleged room and no other heir whosoever is alive is interested in living in the alleged room.

It is pertinent to mention that it is a collusive exercise between the landlady and heirs of Mukhtiar Jain that the room has been purposely kept under lock. It is in order to give colour in the present case that the landlady is not taking the possession of the alleged room and it is an ulterior motive behind it that once the petitioner is ousted then the possession of the alleged room. It is further stated that no action whatsoever has been taken by the landlady to seek possession of the alleged room which is vacant for almost one and half year.

It is under these circumstances that the Hon'ble court may be pleased to consider the subsequent event which has taken place as the need of the landlady is fulfilled as observed in order/judgment of the lower appellate."

Regarding the bonafide requirement of the landlord, it has been held in 1992 ARC (2) 523 – Chnadrapal Singh parihaar VBs. Vth Addl. District Judge, Kanpur as below:

" In Smt. Satya Misra and others Vs. IInd Additional District Judge, and others, 1978 UPRCC Supplement 738, K.C. Agarwala, J. (as he then was) while interpreting the expressin 'for occupatin by himself' held as under:

" The expression's 'for occupation by himself' does not mean that the landlord should live in isolation. If the State of health of a landlord or his age is such that he cannot live alone and would need the company or assistance of any other person, then the need of such other persons whose assistance, he needs would also be converted by this phrase. Similarly, if the landlord, is invalid an accommodation required for a helper may also be considered as the need of the landlord.....A distinction has, therefore, to be maintained between two classes of cases where a landlord does not need an assistance of a man but still he wants to keep someone with him, in such a case the need for occupation would not be that of the landlord but of that other person. But, where, as here, the landlord keeps his daughter and her son-in-law to look after his business and for his help, it will have to be held that the requirement of

these persons to have an accommodation to live with landlord is bona fide need of the landlord himself.”

In *Mishri Lal Vs. Special Judge/Additional Judge, Gorakhpur and others*, 1988 (2) ARC 430, while interpreting the expression “for occupation by himself” used in clause (a) of sub-section (1) of Section 21 of the U.P. Act No. 13 of 1972, R.K. Gulati, J. has observed as under:

“It has consistently been held that the said phrase cannot be construed very narrowly to mean that the landlord should live in isolation or by himself only. In other words, the expression within its ambit includes the personal requirement of a landlord. It may include landlord’s servant, some other person or person who looks after him and takes care and whose company and assistance is or has become necessary though technically they may not be members of his family and defined in the Act. Thus the needs for such others, whose assistance is required to the landlord, although they may not include in the term ‘family’ in this Act, is the own need of the landlord.”

In *Thakur Deen Vs. Hero Devi*, 1984 ALJ 787 : 1984 (2) ARC 117, B.N. Sapru, J. observed as under:

“A son is undoubtedly a member of the family of the landlady. The crucial words are “for occupation by himself or any member of his family”; The words ‘occupation’ in the context in which it is placed in section 21(1) (a) means occupation by the landlord or the members of his family along with those persons who would normally reside with him. It does not mean that a landlord must need the accommodation for his occupation alone in the sense that he cannot bring with him any other person who would normally live with him.”

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In the circumstances, in this view of the law, it cannot be held that the authorities below committed any manifest error of law in holding that the landlady’s need included the need of the sons and the daughters-in-law to be accommodated in the building in question.”

15. In *Rani Chaturvedi Vs. Shiv Narain and others* 1979 ARC 479, S.D. Agarwala, J. While applying the proposition laid down in the case of *Smt. Satya Misra* (supra), held as under:

“Section 21 (1)(a) of the Act gives right to the landlord to apply for release of a building under occupation of the tenant if the landlord requires the building for occupation by himself or any members of

the family. The landlord can apply for 'occupation by himself or any member of his family. The landlord can apply for 'occupation by himself or 'for occupation' by any member of his family'. In case an application is made for occupation by any member of his family, then alone the member of family 'will be only such a person who comes within the definition of the word 'family' as provided by section 3(g) of the Act. If, however, the landlord requires the building for occupation by himself, then the question of applicability of the definition of the word 'family' as used in section 3(g) does not arise. The Court has to examine the own need of the landlord and in such a case the fact that the relations of the landlord are permanently residing with the landlord, would be a relevant consideration for the Court to consider while examining the case of the landlord.".....

In the case of Chandrapal Singh (supra), it has been held as under:

“Man is not machine-made and he is also not made of flesh and bones alone. Sentiments and emotions are equally important constituent of human frame. Further the man is essentially a social being and, therefore, the social milieu a man lives in and the value system he adopts to be guided with are bound to have an impact upon his activities which in their turn necessarily influence the need and requirement of his life. Accordingly, having given my indepth consideration to the question as to what requirement of a landlord for his personal occupation of the building should be treated as requirement valid in law for the purpose of section 21(1)(a) of the Act, I am of the opinion that a landlord may require the building or part thereof not only to meet his personal physical requirements of a comfortable and dignified living befitting his status but, subject to the Statutory restriction such as the one contained in clause (1) of the third proviso to section 21(1) and the one contemplated by the fourth proviso, he may also legitimately require the building or part thereof for personal occupation in order to meet his moral, social and philanthropic needs, requirements, duties and obligation.

Moral and social factors are also relevant besides the factors enumerated in Rule 16 of the Rules for the purpose of Section 21(1)(a) of the Act in considering the requirements of personal occupation for purposes of residence by the landlord or any member of his family,. Social rules and moral principles governing human

conduct are, to my mind, irrevocably linked with progress in life. The legislature, therefore, must not have intended to exclude such requirement for personal occupation from the purview of Section 21(1)(a) of the Act.

If the landlord moved by social rules and moral principles, sentiments of love and affection, sympathy and compassion, permanently accommodates with him a person related to him by marriage or birth, directly or indirectly, who is in distress, the need of occupation for the purpose of residence of such person may be taken as the need of the landlord himself notwithstanding the fact that such person is not a member of landlord's family within the meaning of the term as defined in Section 3 (g) and the landlord also does not require such person for any assistance, personal or professional. Reason being the fulfillment of landlord's social and moral need. In fact by doing so the landlord not only saves himself from social condemnation but he also earns praise among those who know him for his act of material and moral generosity towards a needy relative. This is my opinion would provide sufficient and legitimate justification for the need of occupation by such person for the purpose of residence being treated as the need of landlord himself.

The section so construed would go a long way towards achieving true justice that is to say the justice which is one with perfect harmony, perfect equilibrium and perfect order. I am of the view that justice, if not properly tempered and harmonized in the manner stated above, may wreck the very moral fibers of the people which may cause more harm than the good intended to be achieved by the Act. I must, however, hasten to add that a landlord's need for accommodation in respect of his moral and social duties and obligation should be very scrupulously and strictly construed and the landlord must also be made to sacrifice to some extent, his own personal needs for in my opinion, it is necessary so to do while considering the landlord's need involving elements of material and moral generosity as otherwise conceptual profundity of the expression "occupation by himself or any member of his family" used in the section would get diluted to an extent of conversion of bona fide into mala fide and further, too liberal a construction of this type of need of the landlord may attract the provisions of Section 12 of the Act which inter alia, provides that if a landlord allows a building or part thereof to be occupied by a persons who is not member of his family, the building or at thereof, as the case may be, in exclusive occupation of such

person may be deemed to be vacant. The authorities under the Act, therefore, scrupulously examine that the professed need of the landlord is bona fide and genuine and must see whether the person for whom he needs an extra accommodation, is permanently residing with him not as a separate unit but as a member of his family in the sense of the term used in common parlance. This in my opinion is the broad principle according to which the need of a person being not a member of the landlord's family and also not being required by him for any personal or professional assistance, may be treated as the need of the landlord himself for the purpose of Section 21(1)(a) of the Act."

In *Joginder Pal Vs. Naval Kishore Behal* 2002 Supreme Court and Full Bench, Rent Case page 388, the apex Court after relying upon the judgment of *Mst. Bega Behum and others Vs. Abdul Ahad Khan* (1979) 1 SCC 273 and *Shiv Shiv Sarup Vs. Dr. Mahesh Chand Gupta*, 1999 SCFBRC 330 in para 8, 9, 10, 16 and 17 held as under:

"8. The need for reasonable interpretation of Rent Control Legislation was emphasized by the Court in *Mst. Bega Begum and others Vs. Abul "Ahad Khan* (dead by Lrs. and others, (1979) 1 SCC 273: 1986 SCFBRC 346. Speaking in the context of reasonable requirement of landlord as a ground for eviction the Court guarded against any artificial extension entailing stretching or straining of language so as to make it impossible or extremely difficult for the landlord to get a decree for eviction. The Court warned that such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds. In *Kewal Singh Vs. Lajwanti*, (1980) 1 SCC 290, this Court has observed while the rent control legislation has given a number of facilities to the tenants it should not be construed so as to destroy the limited relief which it seeks to give to the landlord also. For instance one eviction which is contained in almost the Rent Control Act in the contrary is the question of landlord's bona fide personal necessity. The concept of bona fide necessity should be meaningfully construed to make the relief granted to the landlord real and practical. Recently in *Shiv Sarup Vs Dr. Mahesh Chand Gupta*, 1999 SCFBRC 330: (1999) 6 SCC 222, the Court has held that the concept of bona fide need or genuine requirement needs a practical approach instructed by realities of life. An approach

either too liberal or too conservative or pedantic must be guarded against.

The Rent Control Legislations are heavily loaded in favour of the tenants treating them as weaker sections of the society requiring legislative protection against exploitation and unscrupulous devices of greedy landlords. The Legislative intent has to be respected by Courts, while interpreting the laws. But it is being uncharitable to Legislature if they are attributed with an intention that they lean only in favour of the tenants and while being fair to the tenants go to the extent of being unfair to the landlords. The Legislature is fair to the tenants as to the landlords- both. The Courts have to adopt a reasonable and balanced approach while interpreting Rent Control Legislations starting with an assumption that equal treatment has been meted out to both the sections of the society. In spite of the overall balance tilting in favour of the tenants, while interpreting such of the provisions as take care of the interests of the landlord the Court should not hesitate in leaning in favour of the landlords. Such provisions are engrafted in rent control legislations to take care of those situations where the landlord too are weak and feeble and feel humble.”

10. Both the learned counsel for the parties submitted that so far as the expression ‘his own use’ as occurring, in Section 13(3)(ii)(a) is concerned, no occasion has hitherto before arisen enabling this Court making an authoritative interpretation and pronouncement. The nearest available is Mst. Bega Begum and others (supra) which has been referred to by the High Court in its impugned judgment and was relied on by Shri Sudhir Chandra, the learned Senior Counsel for the landlord-respondent. Section 11(1)(h) of J & K Houses and Shops Rent Control Act, 1966 provides for the tenant being evicted if the landlord requires the house for his own occupation. The Court held that the provision is meant for the benefit of the landlord and therefore it must be so construed as to advance the object of the Act. The words “own occupation” contemplate the actual possession of the landlord whether for his own residence or for his business. Furthermore, the provision is wide enough to include the necessity of not only the landlord but also of the persons who are living with him as members of the same family. The words ‘own occupation’ cannot be so narrowly interpreted as to indicate actual physical

possession of the landlord personally and nothing more than that. ....

16. A Division Bench of Patna High Court has opined in *Bidhubhusan Sen Vs. Commissioner, Patna Division, Patna* and another, 1955 BLJR 654 that the expression “his own occupation” as occurring in sub-section (3)(a) of Section 11 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 does not mean only the occupation of the landlord himself but includes the occupation of other persons who live with the landlord and are economically dependent on him. The requirement of nephew, whose maintenance was responsibility of the landlord was held to be covered by the expression ‘his own occupation’ of the landlord.

17. In *Puspa Lata Debi Vs. Dinesh Chandra Das*, 85, C.L.J. 74, P.B. Mukharji, J. (as His Lordship then was) observed that the expression “for his own occupation” in section 11(1)(f) of W.B. Premises Rent Control (Temporary Provisions) Act, 1949 does not necessarily mean of the particular individual alone but must be widely interpreted to include the family and dependents. The context of social order, the habits and ideas of living and the religious and socio-religious customs of the community to which the individual concerned belongs are relevant determining factors.”

Similar view has been taken in the case of *Smt. Sarla Ahuja Vs. United India Insurance Co. Ltd.* AIR 1999 SC page no. 103. It has been held by the apex Court as under:-

“ When a landlord asserts that he requires his building for his own occupation the Rent Controller shall not proceed on the presumption that the requirement is not bonafide. When other conditions of the clause are satisfied and when the landlord show a prima facts case it is open to the Rent controller to draw a presumption that the requirement of the landlord is bonafide. It is often said by Courts that it is not for the tenant to dictate terms to the landlord as to how else he can adjust himself without getting possession of the tenanted premises. While deciding the question of bonafide of the requirement of the landlord it is quite unnecessary to make an endeavour as to how else the landlord could have adjusted himself.”

In *Allahabad Rent Cases*, 1996 (2) Smt. Nirmala Tandon Vs. Xth A.D.J. Kanpur Nagar, it has been held as under:-

“In Saroj Prasad Sharma Vs. IInd Additional District Judge, Mirzapur and others, 1983 (1) A.R.C. 427, this Court has held as under:-

‘It is common place fact that invariably when an application under section 21 of the Act is allowed, the tenant has to quit and this involves discomfort but if this alone was not sufficient to non-suit the landlord, no application for release could ever be allowed. Judging comparative hardships is a matter of deeper import and it would be elopsided order which dismisses a landlord’s application for release merely with the plaintitudinous observation that the tenant would be “thrown out of the street”. The physical dispossession of tenant is the necessary concomitant of every release application of the landlord which is allowed. Howsoever, well founded that the application may be and element of in convenience or discomfort is inherent in the very process of vacating an accommodation.”

The tenant in a given case has to place acceptable material to show that he would suffer greater hardship and a mere plea that he has no alternative accommodation in itself without something more, would not be sufficient for a finding that he would suffer greater hardship. At the cost of repetition, it may be mentioned that both the Courts below have found that petitioners made no efforts whatsoever to search for alternative accommodation. No material was placed before this Court to come to a contrary conclusion that the petitioners had made any such efforts or the findings reached by the Court below were vitiated in any manner. When the petitioners had brought no evidence on record to establish that despite their sincere efforts they were unable to secure reasonable alternative accommodation for themselves, they cannot be heard to say that there was no comparative hardship between the parties or their hardship would be more as compared to the landlord on the facts of the instant case.

There is another aspect of the matter which also needs consideration of this Court. The writ jurisdiction of this Court under Article 226 and 227 of the Constitution of India in such matter is of supervisory nature only and it does not sit as a Court of appeal when called upon to Judge, the finding of the competent authorities, viz., bona fide

need of the landlord and comparative hardship of the parties. The Court would not embark upon reappraisal of the evidence or substitute its own findings of fact in place of the findings reached by the fact finding authorities. It is clearly outside the Court and ambit of the judicial review when this Court exercises its powers under Article 226 of the Constitution of India. However, a finding of fact may be interfered with when it is based on account of wrong application of principle of law relevant thereto or relevant material has not been taken into consideration, or a finding is otherwise arbitrary or perverse. During the course of arguments nothing was pointed out as to how appreciation of evidence by the Courts below as improper. Not even a single instance was shown, on the basis of which a different view could be taken than the one taken by the authorities below. Those authorities have rightly and for cogent reasons accepted the case of the landlord. In view of the concurrent findings of fact recorded by the Courts below, after appreciation of evidence on record, it is not proper for this Court to reappraise the evidence and come to a different finding from that recorded by the Subordinate Courts. That apart, in view of the discussion made earlier on facts and in law the findings recorded by the Courts below were fully justified and no exception can be taken of the view taken by those authorities.”

In the case of Bega Begum 1997 A.I.R. SC page 272 the Apex Court has observed in case of eviction in every case the tenant has to suffer hardship and that cannot be a ground for refusing the release application. The observation of the Apex Court are quoted below:

Paragraph 13- “ Moreover, section 11(1) (h) of the Act uses the words reasonable requirement which undoubtedly postulate that there must be an element of need as opposed to a mere desire of wish. The distinction between desire and need should doubtless be kept in mind but not so as to make even the genuine need as nothing but a desire as the High Court has done in this case. It seems to us that the connotation of the term ‘need’ or ‘requirement’ should not be artificially extended to its language so unduly stretched or strained

so as to make it impossible or extremely difficult for the landlord to get a decree for eviction. Such a course would defeat the very purpose of the Act, which affords the facility of evicting of the tenant to the landlord on certain specified grounds. This appears to us to be the general scheme of all the Rent Control Acts, prevalent in other States in the country. This Court has considered the import of the word 'requirement' and pointed out that it merely connotes that there should be an element of need."

Paragraph – 19 "In this connection our attention was drawn to the evidence led by the defendants that the main source of their income is the hotel business carried on by them in the premises and if they are thrown out they are to likely to get any alternative accommodation. The High Court has accepted the case of the defendants on this point, but does not appear to have considered the natural consequences, which flow from a comparative assessment of the advantages and disadvantages of the landlord and the tenant if a decree for eviction follows. It is no doubt true that the tenant will have to be ousted from the house if a decree for eviction is passed, but such an event would happen whenever a decree for eviction is passed and was fully in contemplation of the legislature when section 11(1)(H) of the Act was introduced in the Act. This by itself would not be valid ground for refusing the plaintiffs a decree for eviction."

Paragraph 26 " Thus, on a careful comparison and assessment of the relative advantage and disadvantages of the landlord and the tenant it seems to us that the scale is tilted in favour of the plaintiff. The inconvenience, loss and trouble resulting from denial of a decree for eviction in favour of the plaintiffs far outweigh the prejudice or the inconvenience which will be caused to the defendants. The High Court has unfortunately weighed the eviction from that point of view."

Paragraph 28. " For the reason given above, the appeal is allowed. The judgment and decree of the High Court are set aside, and a decree for ejectment of the defendants from the house in dispute is hereby passed against the defendants. In the peculiar circumstances of this case, there will be no order as to costs."

**Comparative Hardship:**

Proviso to section 21 (1)(a) of Act No. XIII of 12972 provides as under:

“Provided also that the prescribed authority, shall, except in cases provided for in Explanation, take into account the likely hardship to the tenant from the grant of the application as against the likely hardship to the landlord from the refusal of the application and for that purpose have regard to such factors as may be prescribed.”

So far as the cases of comparative hardship is concerned, in view of the judgment of the Apex Court in Shushila Vs. IInd A.D.J.Banda reported in 2003 SCFBRC 109 even after considering the Rule 16, need of the landlord has been found to be bona fide and greater hardship lies in his favour rather than the petitioner. The observations of the Apex Court are quoted as under:

“As observed earlier it is clear that the length of period of tenancy as provided under clause (a) of sub-rule 2 of Rule 16 of Rules, 1972 is only one of the factors to be taken into account in context with other facts and circumstances of the case. It cannot be a sole criterion or deciding factor to order or not the eviction of the tenant. Considering the facts in the light of Rule 16 pressed into service on behalf of the respondent, we find that according to the guidelines provided therein balance tilts in favour of the unemployed son of the landlady whose need is certainly bonafide and has also been so accepted by the respondent before us.”

As will appear from the proviso to section 21 (1)(a) of the Act that the likely hardship to the tenant from the grant of the application as against the likely hardship to the landlord from the refusal of the application alone has to be looked into after taking into consideration the factors.

Rule 16 (2) is quoted reads as under:

“(2) While considering an application for release under clause (a) of sub-section (1) of Section 21 in respect of building let out for purposes of any business the prescribed authority shall also have regard to such facts as the following:

- (a) the greater the period since when the tenant opposite party, or the original tenant whose heir the opposite party is, has been carrying on his business in that building, the less justification for allowing the application;”
- (b) where the tenant has available with him, suitable accommodation to which he can shift his business without substantial loss there shall be greater justification for allowing the application;
- (c) the greater the existing business of the landlord own part from the business proposed to be set up in the leased premises, the less the justification for allowing the application, and even if an application is allowed in such a case, the prescribed authority may on the application of the tenant impose the condition where the landlord has available within him other accommodation(whether subject to Act or not) which is not suitable for his own proposed business but may serve the purpose of the tenant, that the landlord shall let out that accommodation to the tenant on a fair rent to be fixed by the prescribed authority;
- (d) where a son or unmarried or widowed or divorced or judicially separated daughter or daughter or male lineal descendant of the landlord has, after the building is originally let out, completed his or her technical education and is not employed in Government service, and wants to engage in self-employment, his or her need shall be given due consideration.”

In the case of Arvind Kumar Vs. IInd A.D.J. Etawah reported in Allahabad Rent Cases, 1997 (1) page 304 Rule 16(2)(a) has been interpreted and it has been held as under:

“ It admits of no doubt that according to clause (a), sub-rule (2) of Rule 16, greater the period since when the tenant has been carrying on his venture in the building, less the justification for allowing the application but at the same time, having regard to overall facts and circumstances of the case, I am persuaded to the view that the findings recorded by the Authorities under the Act in relation to bonafide requirements of the landlord cannot be assailed and whittled down merely because the petitioner had been carrying on his business in the shop in question since the year 1977. It is explicitly postulated in clause (b), sub-rule (2) of Rule 16 that where the tenant has available with him suitable accommodation to which he can shift his business without the peril of substantial loss there shall be greater justification for allowing the application. The expression “available with him” in this sub-rule does not necessarily mean actual physical availability. A suitable alternative accommodation which may become available on an effort being made in that direction is also in the comprehension of the expression and in the facts and circumstances of the case, it has been held that the petitioner was wanting in earnest efforts in looking for suitable alternative accommodation, notwithstanding the fact that the litigation between the parties had protracted to considerable stretched. In Rajendra Kumar Gupta Vs. Gopal Kishan and others, AIR 1995 Alld. 82: 1994 (2) ARC11, it has been held by Sudhir Narain J. and I concur with the view taken therein.....”

The learned counsel for the petitioner has prayed about the Good-will of the tenant. It has been held in Tej Kumar Vs. Addl. District and Sessions Judge, Hardwar reported in Alld. Rent Cases 1994 (2) page 117 as under:

“It has been next contended by the learned counsel for the petitioner that the impugned order passed by the Appellate Authority stands vitiated in law as the implications arising under the loss of ‘good will’ in the event of grant for release sought for have not been

considered by the Appellate Authority in a correct perspective. In this connection, it may be noted that the provisions contained in the Act and the Rules framed there under do not attach any significance to a 'good will'. Rule 16(2)(a) of the Rules does not refer to any good will but nonetheless emphasizes on the length of the period of business being done in the building indicating that the larger the duration of business the less justification for allowing the application for release. It seems to me that the omission to use the term 'good will' appears to be deliberate. It may be usefully noticed that the assets of a business include not only the stock-in-trade and book debt, furniture, bills machinery etc. but also an intangible and a very valuable property called 'good will'. The word 'good will' is very difficult to define and often it can be safely stated that it is nothing more than the probability of the old customers resorting to old place. It sometimes means more than this as often the good will exists quite independently of locally. An assignment of the good will necessarily includes exclusive right to use the name or style in which the business is run. As a matter of fact the 'good will' of a particular business as pointed out by this Court in the case of Mahabir Prasad Vs. Vith Additional District Judge and others, reported in 1993(2) ARC 401, is infact based on personal dealing, attitude, behaviour and conduct of the shop keeper with his customers. Good will in such type of business is not attached to a particular premises but is attached to the person who is carrying on the business. If the shop keeper has good and fair dealings with the customers he would, therefore, carry good will with him even if the business is shifted from one place to another. This Court in the aforesaid decision had pointed out that the mere fact that the tenant is carrying on business in the shop since long could not be a ground to hold that in case his business is shifted to another shop he will lose his 'good will'. This Court further observed that looking to the bonafide requirement of the landlord and also to the comparative hardship of the parties, the factor of the good will would be of little consequences."

In view of the above proposition of law goodwill alone cannot nullify the requirement of the landlord.

Rule 16 (2)(b) of Act No. XIII of 1972 with regard to availability of the accommodation to the tenant has been

interpreted in the case of Munni Lal Gupta Vs. 7<sup>th</sup> Additional District and Sessions Judge, Aligarh reported in 1997 (I) A.R.C. 301. After relying upon the judgment of Rajendra Kumar Gupta Vs. Gopal Krishan and others, A.I.R. 1995 Allahabad 82, it has been held that suitable alternative accommodation, which may become available on an effort being made in that direction is also a factor to be considered and want or earnest efforts in looking for suitable alternative accommodation, disentitles protection given to the tenant while considering the comparative hardship of the parties. The observations in the decision of Munni Lal Gupta (supra) are quoted below:

“A suitable alternative accommodation which may become available on an effort being made in that direction is also in the comprehension of the expression and in the facts and circumstances of the case, it has been held that the petitioner was wanting in earnest efforts in looking for suitable alternative accommodation, notwithstanding the fact that the litigation between the parties had protracted to considerable stretched. In Rajendra Kumar Gupta Vs. Gopal Kishan and others. AIR 1995 Alld. 82: 1994 ARC 11, it has been held by Sudhir Narain, J. and I concur with the view taken therein in that “one of the principles for considering comparative hardship of the parties is to find out as to whether the tenant had made a sincere efforts to find out alternative accommodation and had placed materials before the authorities to come to their conclusions that he made such an effort”. The fact that earlier application for release, met the fate of rejection some 10 years ago, could not be projected backward to operate as an obstacle in the way of the release application being allowed as with the passage of time, the situation has undergone considerable change. Indubitable, landlord Sanjai Gupta did his M.A. after rejection of the earlier applications and his failure to secure employment for himself, lends congruency to his moving the present application.”

Relying upon the judgment of Apex Court Bega Begam Vs. Abdul Ahmad Khan reported in AIR 1979 SC 272, it has

been observed in Prem Prakash Gupta and others Vs. Second Additional District Judge, Allahabad and others – Allahabad Rent Cases 1993 (1) page 77, that no doubt true that the tenant will have to be ousted from a house, if a decree of eviction has been passed, yet such an event by itself will not be a valid ground for refusing a decree for eviction. The observation in the case of Prem Prakash Gupta (supra) is quoted as below:

“ As observed by this Court in its decision in the case Rajeshwari Prasad Vs. Fateh Bahadur Chaturvedi and others reported in 1984 (1) A.R.C. 387, the *bona fide* need is the foundation of application for eviction of a tenant without which it cannot be allowed. Hardship is relative word”.....

In the case of Bega Begum and Abdul Ahmad Khan, reported in AIR 1979 SC 272:1986 SCFBRC 346, the Apex Court had observed that while it was no doubt true that the tenant will have to be ousted from a house if decree of eviction had been passed yet such an event by itself could not be a valid ground for refusing a decree for eviction. While considering the question of relative hardship the requirement of the landlord having regard to his profession or calling or even the status have to be taken into account. In the present case while the landlord had led sufficient evidence to show that no other alternative accommodation was available, the tenant had not let any such evidence which could show that he had ever attempted to search for an alternative accommodation or ever attempted to seek allotment of any accommodation which could be utilised for shifting his business which was dwindling day by day and as observed by the Appellate Authority itself, had been closing during the pendency of appeal.

In this case where there is inaction on the part of the tenant in searching for an alternative accommodation by seeking allotment or otherwise in spite of coming to know that the building in his tenancy is genuinely required by the landlord for satisfying his bona fide need, the question of relative hardships envisaged under the 4<sup>th</sup> proviso to section 21 of the Act deserves to be considered liberally in favour of the landlord specially when the bona fide need for the grant of release sought for is established. While it is true that a proviso embraces the field which is covered by the main provision and the main part cannot be

construed in such a manner so as to render a proviso redundant yet under the scheme of the Act, the 4<sup>th</sup> proviso to section 21 does not appear to fall within those exceptional cases where this proviso may be said to be a part of the substantive provision itself. It should also not be lost sight of that a proviso cannot be permitted to defeat the basic intent expressed in the substantive provision which, as is apparent from the perusal of section 21 of the Act is to enquire the availability of the demised premises to the landlord on his successfully establishing the bona fide requirement of the same for the purpose envisaged in that section.

The connotation of the term of the term 'requirement should not be artificially extended nor its language so unduly stretched or strained as to make it impossible or extremely difficult for the landlord to get an order of release. Such a course would defeat the very purpose of the Act which affords the facility of eviction of the tenant to the landlord on certain specified grounds contemplated under section 21 of the Act. The provisions contained in the Act strike a just balance between the genuine need of the landlord on the one hand and the great inconvenience and troubles of the tenants on the other. Since section 21 of the Act is meant for the benefit of the landlord, therefore, it must be so construed as to advance the object behind the said provision. The tenant has to establish that if he is evicted he will suffer greater hardship as compared to the landlord and must lead clear evidence to show that inspite of the best efforts he was unable to get another alternative suitable accommodation in the absence whereof the scale of relative hardship may be tilted in favour of the landlord as the inconvenience, loss or trouble resulting from a denial of the order of release in favour of the landlord will for outweigh the prejudice or the inconvenience which may likely be caused to the tenants."

In the case of Sardar Pritam Singh through LRs Vs. Sardar Prakash Singh and others in 1999 (2) A.R.C. P-338, it has been observed as below:-

Paragraph 18- "Learned counsel for the petitioner then referred to the decision reported in, 1996 (1) AWC 409. View taken in the decision reported in, 1990 AWC 1508, has been reaffirmed and it is observed that tenant cannot dictate landlord as to how he should live and the need of

the landlord must be commensurate with his statuskeeping in mind his need both qualitatively and quantitatively.”

Paragraph 21- “ No prudent man under normal circumstances could take a view, as has been done by the Courts below. Courts below ought to have taken into account the fact that family is to grow and within short span of time family members were bound to increase in all probabilities. Again children were to grow requiring additional accommodation.”

Paragraph 23- “Writ petition allowed. Petitioners may approach the Prescribed Authority (respondent no.2) to deliver the possession as contemplated under the Act. There will be no order as to costs.”

Further, the appeal having been made by the landlord, it will be open for the petitioner to avail the same.

The above view is also taken in the case of Bharat Kumar Gupta Vs. VIIth Addl. District and Sessions Judge, Aligarh, reported in A.R.C. 1997(2) page 259.

It has come on the evidence on record that the petitioner has available with him the alternative accommodation at 13 Dhamawala, Dehradun. Landlord has filed the copy of the electoral list and official document in support of the fact that the petitioner shall not suffer any hardship as he has already available with him the residential accommodation.

In 2003 SCFBRC 109- Sushila Vs. IInd Addl. District Judge, Banda (supra) has observed as under:

“In our view, the High Court has transgressed the limits of jurisdiction under Article 226 of the Constitution of India by purporting to re-appreciate the evidence and coming to its own conclusion. The High Court has nowhere stated or concluded that the lower Courts had committed an error of jurisdiction or that they had acted illegally and improperly. Further, the High Court failed to notice that a case of casual licence

was not pleaded or proved by the respondent no.4. Therefore, it was not open to the High Court to make out a new case on behalf of the party in its writ jurisdiction under Article 226 of the Constitution.”

The Apex Court in the case of Shiv Sarup Gupta Vs. Dr. Mahesh Chand Gupta reported in SCFBRC, 1999 page 330 has observed as under:

“In Prativa Devi (Smt.) Vs. T.V.Krishnan, 1996 (5)SCC 353, this Court has held that in considering the availability of alternative accommodation, not availability merely but also whether the landlord has the legal right to such accommodation has to be considered.

Reverting back to the case at hand, the landlord has been living on the ground floor of the Defence Colony house. It was conceded at the Bar that as on the day the family of the landlord consists of the landlord himself (a practicing doctor), his son (again a practicing doctor), the daughter-in-law and two grand children who are gradually growing in their age. Looking at the size of the family, available of three bed rooms in the premises in which the landlord may live, is a requirement which is natural and consistent with the sense of decency- not to talk of comfort and convenience. There is nothing unreasonable in a family with two practicing doctors as members thereof needing a room or two or a room with a verandah to be used as a residential-clinic divided into a consultation room and a waiting place for the patients. A drawing room, a kitchen, a living room and a garage are bare necessities for a comfortable living. The landlord has been living in Defence Colony locality for more than 35 years. The first floor which was let out to the tenant in the year 1978 as being an accommodation surplus with the landlord has with the lapse of time become a necessity for occupation by the landlord and his family members. More than ten years by now have been lost in litigation. The death of the wife of the landlord and the death of landlord's mother-in-law, are events which have hardly any bearing on the case of felt need of the landlord. The need as pleaded and proved by the landlord is undoubtedly natural sincere and honest and hence a bona fide need. There is no material available on record to doubt the genuineness of such need. It continues to subsist inspite of the two deaths. It is not

the case of the tenant-appellant that while seeking eviction of the tenant the landlord is moved by any ulterior motive or is guided by some other thing in his mind. It will be most unreasonable to suggest that the landlord may continue to live on the ground floor of the Defence Colony house and some members of the family may move to Sarvodaya Enclave House if the whole family cannot be conveniently and comfortably accommodated as one unit in the Defence Colony house. It would be equally unreasonable to suggest that the entire family must shift to Sarvodaya Enclave House which is admittedly situated at a distance of about 7-8 kms. from Defence Colony. The landlord and his family are used to living in Defence Colony where they have developed friends and acquaintances, also familiarity with the neighbourhood and the environment. The patients usually visiting or likely to visit the residential clinic know where their doctor would be available. Shri Arun Jaitley, learned Senior Counsel for the respondent, has very rightly submitted that it could not have been the intendment of the Rent Control Law to compel the landlord in such facts and circumstances to shift to a different house and locality so as to permit the tenant to continue to live in the tenanted premises. If the landlord wishes to live with comfort in a house of his own, the law does not command or compel him to squeeze himself nightly into lesser premises protecting the tenant's occupancy."

In *Bhagwan Das Vs. Smt. Jiley Kaur and others* reported in SCFBRC 1991 page 182, the tenant was required to establish that he has made efforts, the observations are quoted below:

"Thirdly, it was a case where even this additional circumstance that the appellant had brought no material on record to indicate that at any time during the pendency of this long drawn out litigation he made any attempt to seek an alternative accommodation and was unable to get it. In *Mst. Bega Begum Vs. Abdul Ahad Khan*, (1979) 1 SCC 273; 1986 SCFBRC 246 (SC), it was held that in deciding the extent of the hardship that may be caused to one party or the other, in case a decree for eviction is passed or is refused, each party has to prove its relative advantages or disadvantages and the entire onus cannot be thrown on the plaintiffs to prove that lesser disadvantages will be suffered by the defendants and that they were remediable."

The Apex Court in the case of G.C.Kapoor Vs. Nand Kumar Bhasin and others reported in 2001 Supreme Court and Full Bench Rent Cases 541 has rightly pointed out the plight of a young man to settle in the business. The observations of the Apex Court in para 13 and 14 of the judgment are quoted below:

“13. Another reasoning of the Courts below is that as Rohit did not start the business between the year 1992 and 1997 by taking any property on rent, it could not be said that the appellant needed the suit premises to run the business. There is a categorical averment by the appellant that the business was to be started in the suit premises and the appellant would not be able to take any other premises on rent. Not starting the business in a rented premises during the above-mentioned period, cannot be a ground to deny decree for eviction of the suit premises. This Court in Gaya Prasad Vs. Pradeep Srivastava, 2001(2) SCC 604 : 2001 SCFBRC 128, relying on early decisions of this court held that the crucial date for deciding as the bona fide of requirement of the premises in question for starting clinic by the son of the landlord. The litigation continued for 23 years and during that period the son of the landlord joined provincial medical service and was posted at different places. The Court refused to take notice of the subsequent event holding that crucial date was the date of filing of the eviction petition.

14. The Courts below completely overlooked clause (d) of sub-rule (2) of Rule 16 of the rules while deciding the eviction petition. From the rule extracted earlier, the Court has to ascertain whether the son of the landlord has completed technical education and is not employed in the Government and wants to engage in self-employment. All the criteria laid down in the said clause have been proved and therefore, appellant is entitled to get the decree for eviction.”

### **Conclusion:**

A perusal of the record shows that it is not a case where part release shall serve the purpose of the landlord. Rule 16 (1)(d) of the rules provides as under:

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A perusal of the record shows that it is not a case where part release shall serve the purpose of the landlord. Rule 16 (1)(d) of the rules provides as under:

“(d) Where the tenant’s need would be adequately met by leaving with him a part of the building under tenancy and the landlord’s needs would be served by releasing the other part, the prescribed authority shall release only the latter part of the building;”

From the facts of the case, it does not appear that the part release shall serve the purpose of the landlords. The landlord has been able to prove the bona fide need of the accommodation for the family members, who are two adult sons. Both require separate rooms. Landlady and her husband require separate room. Father-in-law and mother-in-law require separate rooms. Apart from that, bed-rooms also are not sufficient for living.

Moreover, no restrictions can be placed on the rights of the landlord. Even if, it is assumed that some accommodation is likely to fall vacant as will appear from the affidavits on the record, firstly the same has not come in possession of the landlord and secondly, it will be open for the parties to apply for release/allotment and the same shall be considered on merits. It will be open for the petitioner to apply for allotment. Thirdly, in view of the growing family, it is not expected for the landlord to confine himself to the accommodation, the family may further require the additional

accommodation which may be considered accordingly. In the present case landlord has sufficiently proved the bona fide need and comparative hardship and as such there is no impediment in allowing the release application for the entire premises. It appears that the landlord requires the premises according to his own status.

The Apex Court in the case of Bhimanagouda Basanagouda Patil Vs. Mohammad Gudusaheb reported in 2003 SCFBRC 250 has held as under:

“For the reasons, we are of the opinion that the comparative hardship that may be suffered by the landlord will be greater than that of the tenant, and what little hardship that may be suffered by the tenant on facts of the case can be mitigated by granting him two years’ time to vacate the suit schedule premises.”

Consequently, writ petition no. 514 of 2001 is dismissed and writ petition no. 5354 is allowed.

However, time is granted by 31st of December, 2005 to vacate the premises provided an undertaking is given in the following terms by the petitioners:

- (i) to vacate the premises by 31st December, 2005
- (ii) to pay entire damages for use and occupation by 30th November, 2004.
- (iii) The undertaking shall be furnished by 30th November, 2004.
- (iv) resulting rent/damages shall be paid on the first week of every month.
- (v) In case of default the decree for eviction shall be executed forthwith.

October 15 ,2004.

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**(Rajesh Tandon, J.)**